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9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 943-A

12 **HERMAN WESLEY BATEMAN**
13 **9665 Chesapeake Drive, Ste. 445**
14 **San Diego, CA 92123**

A C C U S A T I O N

15 **Land Surveyor License No. L 4605**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
22 Department of Consumer Affairs.

23 2. On or about March 8, 1978, the Board for Professional Engineers and Land Surveyors
24 issued Land Surveyor License Number L 4605 to Herman Wesley Bateman (Respondent). The
25 Land Surveyor License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Code section 8762 states, in pertinent part, that

....

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

1 (5) The points or lines set during the performance of a field survey of any
2 parcel described in any deed or other instrument of title recorded in the county
3 recorder's office are not shown on any subdivision map, official map, or record of
4 survey.

5 (c) The record of survey required to be filed pursuant to this section shall be
6 filed within 90 days after the setting of boundary monuments during the
7 performance of a field survey or within 90 days after completion of a field survey,
8 whichever occurs first.

9 6. Code section 8780 states, in pertinent part, that

10 The Board may receive and investigate complaints against licensed land
11 surveyors and registered civil engineers, and make findings thereon. By majority
12 vote, the Board may reprove, suspend for a period not to exceed two years, or
13 revoke the license or certificate of any licensed land surveyor licensed under this
14 chapter whom it finds to be guilty of:

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16 (b) Any negligence or incompetence in his or her practice of land surveying.

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18 (d) Any violation of any provision of this chapter or of any other law relating
19 to or involving the practice of land surveying.

20 . . .

21 REGULATION

22 7. California Code of Regulations, title 16, section 404(n) provides in pertinent part:

23 Incompetence, as used in Section 8780 of the Code, is defined as the lack
24 of knowledge or ability in discharging professional obligations as a professional
25 Land Surveyor.

26 COST RECOVERY

27 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(Negligence)

9. Respondent is subject to disciplinary action under Code section 8780(b) in that Respondent was negligent in his practice of land surveying. The circumstances are as follows:

10. In 1982, Betty R. hired Respondent to survey her property located at 15352 Skyline Truck Trail in Jamul, California (1982 survey). Respondent surveyed the property and filed a Record of Survey with the San Diego County Surveyor's office which was recorded on June 3, 1982. In December 2005, Betty R.'s attorney hired Respondent to resurvey a portion of Betty R.'s property on Skyline Truck Trail in Jamul, for roadway encroachment onto an adjoining property owner's land (2005 survey).

11. Respondent committed acts of negligence in the preparation of his 2005 survey of Betty R.'s property, as follows:

- a. The monument Respondent found and described at the northwest corner of the E ½ of NW ¼ of SE ¼ of Section 36, T.16 S, R. 1 E., S.B.B. M. does not match the description of the monument that was set per the 1982 survey of Betty R.'s property. There is no reference of record or origin of the monument found at this site in Respondent's 2005 survey.
- b. The monument found at the northeasterly corner of the Hooper property differs from Respondent's set monument per the 1982 survey of Betty R.'s property. There is no reference of record or origin of the monument found at this site in Respondent's 2005 survey.
- c. Respondent found his own monument at the northwest corner of the Hooper property. Respondent notes finding and describing a monument at the intersection of the northerly line of Skyline Truck Trail (RS 1773) with the West line of said E ½ of NW ¼ of SE ¼ of Section 36 that was not found in the 1982 survey. There is no reference of record or origin of the monument found at this site in Respondent's 2005 survey.
- d. Respondent's 2005 survey lacks a cross reference of record bearings and distances relative to those shown on the plat. Respondent failed to make a reference to a basis of

1 measured bearings. The bearings on the westerly line of the 2005 survey between un-
2 referenced monuments is the same as shown in the 1982 survey between 2 differently
3 described referenced monuments. Respondent failed to include in the 2005 survey
4 evidence that it was the same line. The 2005 survey is not a complete survey as
5 prepared. Respondent failed to file a record of survey regarding the 2005 survey of
6 Betty R's property.

7 SECOND CAUSE FOR DISCIPLINE

8 (Incompetence)

9 12. Respondent is subject to disciplinary action under Code section 8780(b) in that
10 Respondent was incompetent in his practice of land surveying regarding the 2005 survey of Betty
11 R.'s property. The circumstances are as follows:

- 12 (a) Respondent showed incompetence in the manner with which he based his methods and
13 procedures used in preparing his Exhibit Plat and Legal Description in the 2005 survey
14 of Betty R.'s property.
- 15 (b) Respondent was incompetent when he failed to file a Record of Survey regarding the
16 2005 survey he performed on Betty R.'s property.
- 17 (c) Respondent was incompetent when he used different monuments, without reference to
18 origin or of perpetuation of original monuments. This creates questions as to position
19 of lines and points on the 2005 survey verses the 1982 survey locations.

20 THIRD CAUSE FOR DISCIPLINE

21 (Violation of Provisions of this Chapter)

22 13. Respondent is subject to disciplinary action under Code section 8780(d) for violation
23 of Code section 8762, in that Respondent failed to file a Record of Survey regarding the 2005
24 survey of Betty R.'s property. The circumstances are set forth above in paragraphs 10 and 11,
25 above, and incorporated herein as though fully set forth.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Land Surveyor License Number L 4605, issued to Herman Wesley Bateman;
2. Ordering Herman Wesley Bateman to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

Apr 3, 2010

Original Signed

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

Complainant

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